No. 17-1042

IN THE

Supreme Court of the United States

BNSF RAILWAY COMPANY,

Petitioner,

v.

MICHAEL D. LOOS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 23, 2018
CERTIORARI GRANTED MAY 14, 2018

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RELEVANT DOCKET ENTRIES FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, NO. 16-1123

Date Filed	Docket Text
01/15/2016	Civil case docketed. [4356520] [16-1123] (CYZ) [Entered: 01/15/2016 08:59 AM]
01/15/2016	Originating court document filed consisting of notice of cross-appeal, docket entries, order of 1/13/2016 [4356525] [16-1123] (CYZ) [Entered: 01/15/2016 09:05 AM]
01/15/2016	CROSS APPEAL BRIEFING SCHEDULE SET AS FOLLOWS: Transcript now due on 02/08/2016. Brief of BNSF Railway Company due 02/16/2016. [15-3355, 16-1123] (CYZ) [Entered: 01/15/2016 09:46 AM]
01/20/2016	Paper copies Appellant/Petitioner Brief, [4356332-2] filed by Mr. Michael D. Loos in 15-3355. 10 paper copies received. w/ Addendum attached [4358479] [15-3355, 16-1123] (MER) [Entered: 01/21/2016 03:10 PM]
01/20/2016	RECORD FILED - APLNT/PET APPENDIX, 1 volume, Location STL, Comments: 3 copies [4358485] [15-3355, 16-1123] (MER) [Entered: 01/21/2016 03:19 PM]

Appendix A

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03/01/2016	Originating court document filed consisting of Partial Satisfaction of Judgment dated 2/26/2016. [4373149] [15-3355, 16-1123] (CYZ) [Entered: 03/01/2016 04:17 PM]

***

03/16/2016	RECORD FILED - APLEE/CROSS-APLNT APPENDIX, 1 volume, Location STL, Comments: 3 copies [4379176] [15-3355, 16-1123] (MER) [Entered: 03/17/2016 04:08 PM]

***

03/17/2016	ADDENDUM of APPELLEE/CROSS-APPELLANT FILED by Appellee/ Cross-Appellant BNSF Railway Company in 15-3355, 16-1123 , w/service 03/15/2016 [4379030] [15-3355, 16-1123] (MER) [Entered: 03/17/2016 01:55 PM]

***

03/21/2016	BRIEF FILED - BRIEF APPELLEE/ CROSS APPELLANT filed by BNSF Railway Company in 15-3355, 16-1123. w/ service 03/18/2016 , Length: 16,306 words 10 COPIES OF PAPER BRIEFS FROM BNSF Railway Company due 03/28/2016

WITH certificate of service for paper briefs. Third brief of Michael D. Loos brief due on 04/20/2016. [4380002] [15-3355, 16-1123] (MER) [Entered: 03/21/2016 04:00 PM]

***

03/28/2016 BRIEF FILED - AMICUS BRIEF filed by United States of America in 16-1123, w/ service 03/23/2016 , Length: 3,331 words 10 COPIES OF PAPER BRIEFS FROM United States of America due 04/04/2016 WITH certificate of service for paper briefs [4382164] [16-1123, 15-3355] (MER) [Entered: 03/28/2016 09:17 AM]

***

05/23/2016 ADDENDUM of APPELLANT/CROSS-APPELLEE THIRD BRIEF FILED by Appellant/Cross-Appellee Mr. Michael D. Loos in 15-3355, 16-1123 , w/service 05/20/2016 [4401755] [15-3355, 16-1123] (MER) [Entered: 05/23/2016 03:25 PM]

***

05/25/2016 BRIEF FILED - REPLY APPELLANT/ CROSS APPELLEE filed by Mr. Michael D. Loos in 15-3355, 16-1123, w/service 05/25/2016, Length: 9,898

words 10 COPIES OF PAPER BRIEFS FROM Michael D. Loos due 05/31/2016 WITH certificate of service for paper briefs. Fourth Brief of Appelle/Cross-Appellant BNSF Railway Company due on 06/08/2016. [4402778] [15-3355, 16-1123] (MER) [Entered: 05/25/2016 11:15 AM]

***

05/31/2016 BRIEF FILED - AMICUS BRIEF filed by American Association for Justice in 15-3355, 16-1123 w/service 05/27/2016 Length: 5,644 words 10 COPIES OF PAPER BRIEFS FROM American Association for Justice due 06/06/2016 WITH certificate of service for paper briefs [4405316] [15-3355, 16-1123] (MER) [Entered: 05/31/2016 03:22 PM]

***

06/16/2016 BRIEF FILED - REPLY APPELLEE/CR APPELLANT BRIEF filed by BNSF Railway Company in 15-3355, 16-1123 w/ service 06/15/2016 , Length: 5,757 words 10 COPIES OF PAPER BRIEFS FROM BNSF Railway Company due 06/21/2016 WITH certificate of service for paper briefs [4413696] [15-3355, 16-1123] (MER) [Entered: 06/16/2016 04:06 PM]

Appendix A

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05/09/2017 MOTION to participate in oral argument, filed by Attorney Ms. Marion E.M. Erickson for Amicus on Behalf of Appellant(s) United States of America in 16-1123 w/service 05/09/2017. [4534531] [16-1123, 15-3355] (MEE) [Entered: 05/09/2017 04:29 PM]

***

05/12/2017 MOTION to split argument time, filed by Attorney Ms. Jacqueline M. Holmes for Appellee BNSF Railway Company in 15-3355, Attorney Ms. Jacqueline M. Holmes for Appellant BNSF Railway Company in 16-1123 w/service 05/12/2017. [4535594] [15-3355, 16-1123] (JMH) [Entered: 05/12/2017 09:57 AM]

05/12/2017 JUDGE ORDER:Granting [4534531-2] motion of amicus curiae, United States to participate in oral argument on behalf of the appellant in the cross-appeal, BNSF Railway. It is further ordered that the United States' request for an additional five of minutes of oral argument time is granted. Hrg June 2017 [4535771] [15-3355, 16-1123] (BWB) [Entered: 05/12/2017 01:51 PM]

Appendix A

05/15/2017	JUDGE ORDER:Granting [4535594-2] motion of appellee/cross-appellant, BNSF Railway to allow two attorneys to present oral argument. Hrg June 2017 [4536247] [15-3355, 16-1123] (BWB) [Entered: 05/15/2017 02:41 PM]
	***
06/06/2017	ARGUED & SUBMITTED in St. Paul to Judges Roger L. Wollman, Morris S. Arnold, Raymond W. Gruender on 06/06/2017 Mr. Michael A. Wolff for Appellant/Cross-Appellee Mr. Michael D. Loos, Mr. William A. Brasher for Appellee/Cross-Appellant BNSF Railway Company and Ms. Nikki Lynn McArthur for Appellee/Cross-Appellant BNSF Railway Company in 15-3355, 16-1123. Ms. Marion E.M. Erickson for Amicus on Behalf of Cross-Appellant United 16-1123. Rebuttal by Mr. Michael A. Wolff for Mr. Michael D. Loos in 15-3355 RECORDED. Click Here To Listen to Oral Argument [4544122] [15-3355, 16-1123] (JMM) [Entered: 06/06/2017 11:48 AM]
08/03/2017	OPINION FILED - THE COURT: Roger L. Wollman, Morris S. Arnold and Raymond W. Gruender AUTHORING JUDGE:Raymond W. Gruender (PUBLISHED) [4564374] [15-3355, 16-

1123] (MER) [Entered: 08/03/2017 07:49 AM]

08/03/2017 JUDGMENT FILED - The judgment of the Originating Court is AFFIRMED in accordance with the opinion. ROGER L. WOLLMAN, MORRIS S. ARNOLD and RAYMOND W. GRUENDER Hrg June 2017 [4564383] [15-3355, 16-1123] (MER) [Entered: 08/03/2017 08:15 AM]

08/10/2017 MOTION for extension of time to file petition for rehearing until 09/18/2017, filed by Attorney Ms. Alice Elizabeth Loughran for BNSF Railway Company w/service 08/01/2017. [4567453] [16-1123]--[Edited 08/11/2017 by LMT]--[Edited 08/11/2017 by LMT]--[Edited 08/11/2017 by LMT] (AEL) [Entered: 08/10/2017 04:01 PM]

08/15/2017 JUDGE ORDER: Granting [4567453-2] motion for extension of time to file rehearing filed by Attorney Ms. Alice Elizabeth Loughran for BNSF Railway Company. Petition for rehearing due on 09/18/2017. Hrg June 2017 [4568465] [16-1123] (MER) [Entered: 08/15/2017 10:47 AM]

***

Appendix A

09/18/2017	PETITION for enbanc rehearing and also for rehearing by panel filed by Appellant BNSF Railway Company w/service 09/18/2017 [4580015] [16-1123] (AEL) [Entered: 09/18/2017 02:15 PM]
10/26/2017	JUDGE ORDER:Denying [4580015-2] petition for enbanc rehearing filed by Appellant BNSF Railway Company. The petition for panel rehearing is also denied. Judge Kelly did not participate in the consideration or decision of this matter.; [4580015-3] , PUBLISHED ORDER. Hrg June 2017 [4593776] [16-1123] (MER) [Entered: 10/26/2017 09:35 AM]
11/02/2017	MANDATE ISSUED. [4596338] [15-3355, 16-1123] (MER) [Entered: 11/02/2017 09:39 AM]

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Appendix A

RELEVANT DOCKET ENTRIES FROM THE U.S. DISTRICT COURT OF MINNESOTA (DMN) CIVIL DOCKET FOR CASE #: 0:13-CV-03373-PAM-FLN

Date Filed	#	Docket Text
12/09/2013	1	COMPLAINT against BNSF Railway Company. (Filing fee $400 receipt number 40076007) Case assigned to Judge Paul A. Magnuson per Master List and referred to Magistrate Judge Franklin L. Noel. Filed by Michael D. Loos. Filer requests summons issued. (Attachments: # 1 Civil Cover Sheet) (akl)DOCUMENT QC'D ON 12/10/13 LGL Modified on 12/10/2013 (LGL). (Entered: 12/09/2013)
		***
12/30/2013	3	ANSWER to Complaint by BNSF Railway Company. (Ferguson, Sally) (Entered: 12/30/2013)
		***
09/08/2015	116	Minute Entry for proceedings held before Judge Paul A. Magnuson: Jury Selection held on 9/8/2015, Jury Trial begun on 9/8/2015. Plaintiff's witness: Michael Loos. (Court Reporter Staci Hechert) (JEP) (Entered: 09/08/2015)

Appendix A

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09/09/2015	118	Minute Entry for proceedings held before Judge Paul A. Magnuson: Jury Trial continued on 9/11/2015. Plaintiff witnesses: John Kaye, Deb Kaye, Michael Loos, Karyn Loos, Dr. Kim Schaap via video deposition. (Court Reporter Kristine Mousseau/Jeanne Anderson) (JEP) Modified text on 9/10/2015 (JDF). (Entered: 09/09/2015)

***

09/11/2015	120	Minute Entry for proceedings held before Judge Paul A. Magnuson: Jury Trial continued on 9/11/2015. Oral motion-Def. Motion for Direct Verdict, argued, DENIED. (Trial to continue 9/14/15.) Defendant's witnesses: Benjamin Griffith, Bill Shuland, and John Wright. (Court Reporter Lori Simpson) (JEP) (Entered: 09/11/2015)

***

09/14/2015	122	Minute Entry for proceedings held before Judge Paul A. Magnuson: Jury Trial continued on 9/14/2015. Oral decision on motion-granting 121 Motion in Limine. (Trial to continue 9/15/15.) Defendant's witness: William

T. Simonet, M.D., P.A. (Court Reporter Heather Schuetz) (JEP) Modified file date on 9/15/2015 (JDF). (Entered: 09/15/2015)

***

09/14/2015	124	Minute Entry for proceedings held before Judge Paul A. Magnuson: Jury Trial completed on 9/15/2015. (Court Reporter Carla Bebault) (JEP) (Entered: 09/15/2015)
09/15/2015	125	Final Jury Instructions. (JEP) (Entered: 09/15/2015)
09/15/2015	126	REDACTED JURY VERDICT. Pursuant to Fed. R. Civ. P. 5.2, unredacted version of this document is filed under seal. (Attachments: # 1 SEALED Original Jury Verdict) (AKL) (Entered: 09/16/2015)

***

09/17/2015	129	JUDGMENT. (Attachments: # 1 Civil Notice - appeal)(TSS) (Entered: 09/17/2015)
09/25/2015	130	MOTION for Collateral Source Offset and NOTICE OF HEARING ON MOTION *for Collateral Source Offset*

(Miller, Lee) Modified on 9/28/2015 (TSS). (Entered: 09/25/2015)

10/07/2015 131 TEXT ONLY ENTRY: NOTICE to Attorneys: The Defendant's Motion for Collateral Source Offset (Doc. No. 130) will be decided by Judge Paul A. Magnuson without a hearing, on the submissions. Plaintiff's response is due by October 21, 2015. Any reply will be due by October 28, 2015. (JEP) (Entered: 10/07/2015)

10/07/2015 132 TEXT ONLY ENTRY: NOTICE to Attorneys: REVISED BRIEFING SCHEDULE: Doc. No. 130 Defendant's Motion for Collateral Source Offset. Defendant's Memorandum will be due by October 21, 2015. Plaintiff's response will be due by November 4, 2015. Any reply will be due by November 11, 2015. (JEP) (Entered: 10/07/2015)

***

10/16/2015 136 NOTICE OF APPEAL TO 8TH CIRCUIT as to 62 Order on Motion to Bifurcate,, Order on Motion for Summary Judgment,, Order on Motion for Continuance, by Michael D. Loos. Filing fee $ 505, receipt number

AMNDC-4608364. (McReynolds, Michael) (Entered: 10/16/2015)

***

10/19/2015	138	TRANSMITTAL OF APPEAL LETTER TO U. S. COURT OF APPEALS, 8TH CIRCUIT, Re: Notice of Appeal to 8th Circuit 136. (JDF) (Entered: 10/19/2015)
10/21/2015	139	MEMORANDUM IN SUPPORT re 130 MOTION for Collateral Source Offset by BNSF Railway Company. (Ferguson, Sally) Modified text on 10/21/2015 (JDF). (Entered: 10/21/2015)
10/21/2015	140	AFFIDAVIT of Sally J. Ferguson in SUPPORT OF 139 MOTION Collateral Source Offset re 130 MOTION for Collateral Source Offset , 130 MOTION for Collateral Source Offset filed by BNSF Railway Company. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C, # 4 Exhibit(s) D, # 5 Exhibit(s) E, # 6 Exhibit(s) F, # 7 Exhibit(s) G, # 8 Exhibit(s) H, # 9 Exhibit(s) I, # 10 Exhibit(s) J)(Ferguson, Sally) Modified text on 10/21/2015 (JDF). (Entered: 10/21/2015)

Appendix A

10/21/2015	141	LR7.1/LR72.2 WORD COUNT COMPLIANCE CERTIFICATE by BNSF Railway Company re 140 Affidavit in Support of Motion,, filed by BNSF Railway Company. (Ferguson, Sally) (Entered: 10/21/2015)
10/22/2015	142	Supplemental AFFIDAVIT of Sally J. Ferguson in SUPPORT OF 139 MOTION Collateral Source Offset re 130 MOTION for Collateral Source Offset filed by BNSF Railway Company. (Attachments: # 1 Exhibit(s) K)(Ferguson, Sally) Modified text on 10/23/2015 (JDF). (Entered: 10/22/2015)
10/22/2015	143	USCA Case Number 15-3355 for 136 Notice of Appeal to 8th Circuit filed by Michael D. Loos. (AKL) (Entered: 10/23/2015)

***

11/04/2015	147	MEMORANDUM OF LAW in Opposition re 130 MOTION for Collateral Source Offset filed by Michael D. Loos. (Attachments: # 1 Certificate of Compliance)(McReynolds, Michael) Modified text on 11/5/2015 (JDF). (Entered: 11/04/2015)
11/04/2015	148	DECLARATION of Michael P. McReynolds in Opposition to 147 Response in Opposition to Motion filed

by Michael D. Loos. (McReynolds, Michael) Exhibit A is also included with this filing. Modified text on 11/5/2015 (JDF). (Entered: 11/04/2015)

11/04/2015 149 DECLARATION of Michael Loos in Opposition to 147 Response in Opposition to Motion filed by Michael D. Loos. Exhibit A is also included in the filing. (McReynolds, Michael) Modified text on 11/5/2015 (JDF). (Entered: 11/04/2015)

11/04/2015 150 DECLARATION of Karyn Loos in Opposition to 147 Response in Opposition to Motion filed by Michael D. Loos. Exhibit A is also included with this filing. (McReynolds, Michael) Modified text on 11/5/2015 (JDF). (Entered: 11/04/2015)

11/05/2015 151 NOTICE to USCA of subsequent filing in a civil case, Re: Reply 145 , Objection to Bill of Costs 144 , Declaration in Opposition 148 , Affidavit in Support 146, Declaration in Opposition 150, Response in Opposition to Motion 147, Declaration in Opposition 149. (JDF) (Entered: 11/05/2015)

***

11/11/2015	155	REPLY re 147 Response in Opposition to Motion filed by BNSF Railway Company. (Attachments: # 1 LR7.1/ LR72.2 Word Count Compliance Certificate)(Ferguson, Sally) (Entered: 11/11/2015)
11/11/2015	156	AFFIDAVIT of Sally J. Ferguson in SUPPORT OF 139 MOTION Collateral Source Offset re 130 MOTION for Collateral Source Offset filed by BNSF Railway Company. (Attachments: # 1 Exhibit(s) A)(Ferguson, Sally) Modified text on 11/12/2015 (JDF). (Entered: 11/11/2015)
11/12/2015	157	NOTICE to USCA of subsequent filing in a civil case, Re: Affidavit in Support of Motion, 156, Reply 155. (JDF) (Entered: 11/12/2015)
12/15/2015	158	IT IS HEREBY ORDERED that BNSF's Motion for Collateral Source Offsets 130 is Denied in Part and Granted in Part. (Written Opinion) Signed by The Hon. Paul A. Magnuson on 12/15/2015. (LLM) (Entered: 12/15/2015)
01/13/16	159	NOTICE OF APPEAL TO 8TH CIRCUIT as to 158 Order on Motion to Alter Judgment by BNSF Railway

Company. Filing fee $ 505, receipt number AMNDC-4730020. (Miller, Lee) (Entered: 01/13/2016)

01/13/2016 160 TRANSMITTAL OF APPEAL LETTER TO U. S. COURT OF APPEALS, 8TH CIRCUIT, Re: Notice of Appeal to 8th Circuit 159. (JDF) (Entered: 01/13/2016)

01/15/2016 161 USCA Case Number 16-1123 for 159 Notice of Appeal to 8th Circuit filed by BNSF Railway Company. (AKL) (Entered: 01/19/2016)

02/29/2016 162 PARTIAL SATISFACTION OF JUDGMENT by BNSF Railway Company. (Miller, Lee) (Entered: 02/29/2016)

03/01/2016 163 NOTICE to USCA of subsequent filing in a civil case, Re: Partial Satisfaction of Judgment 162. (JDF) (Entered: 03/01/2016)

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APPENDIX B — PARTIAL SATISFACTION OF JUDGMENT OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FILED FEBRUARY 29, 2016

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil File No: 13-cv-03373-PAM-FLN
Case Type: FELA/FRSA

MICHAEL D. LOOS,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

PARTIAL SATISFACTION OF JUDGMENT

Michael P. McReynolds, Attorney for Plaintiff Michael D. Loos ("Loos") hereby certifies that the judgment entered in the District Court in the above-entitled matter on the 17th day of September, 2015 in favor of Loos against Defendant BNSF Railway Company ("BNSF") for the sum of $126,212.78 has been partially satisfied in the amount of $112,290.13 and leaving the amounts of $3,949.35 and any accrued interest thereon, representing BNSF's Bill of costs and $3,765.00, and any accrued interest thereon, in dispute, representing the claimed employee's portion of Railroad Retirement Tier 1 and Tier 2 and Medicare

taxes, which have been paid to the U.S. Treasury per the attached, Affidavit of Donald S. Lee, with Exhibits A, B, and C and that the District Court is hereby authorized to partially discharge said judgment of record. Plaintiff's Bill of Costs for $16,791.99 remains to be addressed by the Court and added to the remaining unsatisfied portion of the Judgment.

IN TESTIMONY WHEREOF I have hereunto set my hard this 26th day of February, 2016.

Dated: 2-26-2016 TELLO LAW FIRM
Michael F. Tello (#156188)
Michael P. McReynolds (#154374)
2150 Third Avenue North, Ste. 10
Anoka, MN 55303
P: (763) 0159

Attorneys for Plaintiff Michael Loos

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil File No: 13-cv-03373-PAM-FLN
Case Type: FELA/FRSA

MICHAEL D. LOOS,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

AFFIDAVIT OF DONALD S. LEE

I, Donald S. Lee, being first duly sworn, do state, to the best of my knowledge and belief:

1. My name is Donald S. Lee. I am over the age of 21 and currently employed by BNSF Railway Company as Manager of Payroll Taxes, system-wide for BNSF Railway Company. I have personal knowledge of the facts set forth in this affidavit.

Appendix B

2. I am personally familiar with the requirements for withholding, remitting and reporting of Railroad Retirement Board (RRB) taxes Those taxes for employees consist of Tier 1, Tier 2 and Medicare taxes. The current rates for the employee portions are:

Tier 1: 6.2% of paid compensation up to $118,500 annually.

Ties 2: 4,9% of paid compensation up to $88,200 annually.

Medicare: 1.45% of compensation with no maximum.

Medicare: 0.9% of compensation in excess of $200,000.

3. BNSF is also required to pay the employer's portion of RRB Tier 1 and Tier 2 and Medicare taxes based on each employee's compensation as follows:

Tier 1: 6.2% of paid compensation up to $118,500 annually.

Tier 2: 13.1% of paid compensation up to $88,200 annually.

Medicare: 1.45% of compensation with no maximum.

Appendix B

4. For the **employee's** portion of the taxes for Mr. Loos, BNSF withheld and paid the following:

a.	Tier 1: (6.2% of paid compensation up to $118,500)	$1,860.00
b.	Tier 2: (4.9% of paid compensation up to $88,200)	$1,470.00
c.	Medicare: (1.45% of compensation, $30,000)	$435.00
d.	Total:	$3,765.00

5. Under the Railroad Retirement Tax Act (RRTA) the employee and employer portions of taxes under the Railroad Retirement Act (RRA) are administered by the IRS and are paid to the U.S. Treasury.

6. BNSF has complied with the reporting requirements of the RRA and RRTA and has submitted RRB Form BA-4 to the Railroad Retirement Board reporting, as payment for time lost, the amount of $30,000, which is the portion of the verdict allocated to past wage loss.

7. BNSF has paid the employer's portion of the RRB Tier I and Tier 2 and Medicare taxes on the amount of $30,000, the payment for time lost, which is the portion of the verdict allocated to past wage loss. BNSF has paid the following as the **employer's** portion of the RRTA taxes: $1,860.00 (Tier 1), $435.00 (Medicare) and $3,930.00 (Tier 2) for a total of $6,225.00. The employer's portion was paid by BNSF **in addition to** the judgment. This amount was

not withheld from the judgment. This amount was paid to the U.S. Treasury through the Electronic Federal Tax Payment System, Settlement Date February 8, 2016.

8. BNSF has withheld the employee portion of RRB and Medicare taxes as set forth above in the amount of $3,765.00 and on February 5, 2016, initiated payment to the U.S. Treasury through the Electronic Federal Tax Payment System (EFTPS) with a Settlement Date of February 8, 2016.

9. I attach as Exhibit A to this Affidavit, a copy of the "2015-Worksheet to Calculate RRT Due", a spreadsheet/document I prepared in the ordinary course of business for BNSF. This spreadsheet lists the calculations explained in the paragraphs above.

10. I attach as Exhibit B to this Affidavit, a copy of the Deposit Confirmation, showing Federal Tax Deposit, Settlement Date, February 8, 2016, of the amount of $9,990.00, and a copy of the Payroll Results Adjustment showing $9,990.00, to be the total of both the employee and employer portions of the RRB Tier 1 and Tier 2 and Medicare taxes on the amount of $30,000, the payment for time lost, which is the portion of the verdict allocated to past wage loss.

11. I attach as Exhibit C to this Affidavit, a copy of RRB Form BA-4: Report of Creditable Compensation Adjustments for Michael Loos, which was prepared and submitted to the RRB.

Appendix B

FURTHER, AFFIANT SAYETH NOT.

/s/_____
Donald S. Lee

Subscribed and sworn to before me this 10th day of February, 2016.

/s/_____
Notary Public

My Commission Expires 8.3.2016

Appendix B

For Exhibits A-C,
See Supplemental Appendix Page SA1

APPENDIX C – DECLARATION OF MICHAEL P. MCREYNOLDS IN SUPPORT OF PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR COLLATERAL SOURCE OFFSETS, FILED NOVEMBER 4, 2015

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil File No: :13-CV-03373-PAM-FLN
Case Type: FELA/FRSA

MICHAEL D. LOOS,

Plaintiff,

v.

BNSF RAILWAY COMPANY, A CORPORATION,

Defendant.

DECLARATION OF MICHAEL P. MCREYNOLDS

1. I am one of the attorneys for Plaintiff Michael Loos.

2. Attached as Exhibit A is a true and correct copy of Senior District Court Judge E. Richard Webber's Memorandum and Order of July 7, 2014 in *Cowden v. BNSF Railway Company,* United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:08CV01534 ERW, 2014 WL 3096867.

Appendix C

3. During the trial of this case, I spoke with BNSF counsel Lee A. Miller and BNSF Claim Representative William McFadden and proposed that BNSF pay the bills for the surgery and related medical treatment and physical therapy related to that surgery. These are the bills at issue in Defendant's motion. BNSF declined to pay the bills. Had BNSF agreed to pay the bills, they would not have been presented at trial. Typically, in my experience, defendant railroads pay such bills.

4. I have been practicing law since 1977 in the FELA field, including my first 10 years working for Union Pacific Railroad and Burlington Northern Railroad, now BNSF Railway Company. In the hundreds of cases I have been involved with, BNSF and other railroads agreed that FELA verdicts and settlements, were not taxable under the Internal Revenue regulations and the Railroad Retirement Tax Act. Only in the past few years has any suggestion been made that Railroad Retirement taxes should be deducted from FELA judgments.

5. Attached as Exhibit B is a provision from The National Railway Carriers and United Transportation Union Health and Welfare Plan, effective 7-1-2008, entitled Special Notice Concerning Claims Against A Participating Railroad For On-Duty Injuries. This provides that railroad insurance is intended to cover on-duty injuries such that railroads will not be double billed for insurance benefits provided under the agreement. This provision does not apply to the Loos bills at issue because BNSF refused to pay these bills. The plan is available online at www.yourtracktohealth.com.

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This declaration is made in accordance with 28 U.S.C. § 1746, and I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of November, 2015 in Anoka, MN.

/s/_____
Michael P. McReynolds

APPENDIX D — INSTRUCTIONS FOR IRS FORM CT-1, EMPLOYER'S ANNUAL RAILROAD RETIREMENT TAX RETURN

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

2014
Instructions for Form CT-1
Employer's Annual Railroad Retirement Tax Return

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form CT-1 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/ct1*.

What's New

Changes to tax rates and compensation bases. For the 2014 tax rates and compensation bases, see *Employer and Employee Taxes*, later.

Reminders

Tier 1 Employee Additional Medicare Tax withholding. In addition to withholding Tier 1 Employee Medicare tax at 1.45%, you must withhold a 0.9% Tier 1 Employee Additional Medicare Tax from compensation you pay to an employee in excess of $200,000 in a calendar year.

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You are required to begin withholding Tier 1 Employee Additional Medicare Tax in the pay period in which you pay compensation in excess of $200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Tier 1 Employee Additional Medicare Tax is only imposed on the employee. There is no employer share of Tier 1 Additional Medicare Tax. All compensation that is subject to Tier 1 Medicare tax is subject to Tier 1 Employee Additional Medicare Tax withholding if paid in excess of the $200,000 withholding threshold.

Visit IRS.gov and enter "Additional Medicare Tax" in the search box for more information on Tier 1 Employee Additional Medicare Tax.

Change of address. Use Form 8822-B. Change of Address or Responsible Party—Business, to notify the IRS of an address change.

Correcting a previously filed Form CT-1. If you discover an error on a previously filed Form CT-1, make the correction using Form CT-1 X, Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund. Form CT-1 X is filed separately from Form CT-1. For more information, see the Instructions for Form CT-1 X or visit IRS.gov and enter "correcting employment taxes" in the search box.

Federal tax deposits must be made by electronic funds transfer (EFT). You must use EFT to make all federal tax deposits. Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you do not want

to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.

To get more information about EFTPS or to enroll in EFTPS, visit the EFTPS website at *www.eftps.gov*, or call 1-800-555-4477 or 1-800-733-4829 (TDD). Additional information about EFTPS is also available in Pub. 966, Electronic Federal Tax Payment System: A Guide To Getting Started.

Outsourcing payroll duties. Employers are responsible to ensure that tax returns are filed and deposits and payments are made, even if the employer contracts with a third party to perform these acts. The employer remains responsible if the third party fails to perform any required action. If you choose to outsource any of your payroll and related tax duties (that is, withholding, reporting, and paying over taxes imposed by the Railroad Retirement Tax Act, FUTA, and income taxes) to a third-party payer, such as a payroll service provider or reporting agent, visit IRS.gov and enter "outsourcing payroll duties" in the search box for helpful information on this topic.

Paid preparers must sign Form CT-1. Paid preparers must complete and sign the paid preparer's section of Form CT-1.

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Where can you get telephone help? You can call the IRS Business and Specialty Tax Line at 1-800-829-4933 or 1-800-829-4059 (TDD/TTY for persons who are deaf, hard of hearing, or have a speech disability) Monday-Friday from 7:00 a.m.-7:00 p.m. local time (Alaska and Hawaii follow Pacific time) for answers to your questions about completing Form CT-1 or tax deposit rules.

Additional information.

• Pub. 15 (Circular E), Employer's Tax Guide, contains information for withholding, depositing, reporting, and paying over employment taxes.

• Pub. 15-A, Employer's Supplemental Tax Guide, contains specialized and detailed employment tax information supplementing the basic information provided in Pub. 15 (Circular E).

• Pub. 15-B, Employer's Tax Guide to Fringe Benefits, contains information about the employment tax treatment of various types of noncash compensation.

• Pub. 915, Social Security and Equivalent Railroad Retirement Benefits, contains the federal income tax rules for social security benefits and equivalent Tier 1 railroad retirement benefits.

• The Railroad Retirement Board (RRB) website at *www.rrb.gov* contains additional employer reporting information and instructions.

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You can order forms and publications by visiting *www.irs.gov/formspubs* or calling 1-800-TAX-FORM (1-800-829-3676).

Photographs of Missing Children

The IRS is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

General Instructions

Purpose of Form CT-1

These instructions give you some background information about Form CT-1. They tell you who must file Form CT-1, how to complete it line by line, and when and where to file it.

Use Form CT-1 to report taxes imposed by the Railroad Retirement Tax Act (RRTA). Use Form 941, Employer's QUARTERLY Federal Tax Return, or, if applicable, Form 944, Employer's ANNUAL Federal Tax Return, to report federal income taxes withheld from your employees' wages and other compensation.

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Who Must File

File Form CT-1 if you paid one or more employees compensation subject to tax under RRTA.

A payer of sick pay (including a third party) must file Form CT-1 if the sick pay is subject to Tier 1 railroad retirement taxes. Include sick pay payments on lines 8-11 and, if the withholding threshold is met, line 12 of Form CT-1. Follow the reporting procedures for sick pay reporting in section 6 of Pub. 15-A.

Disregarded entities and qualified subchapter S subsidiaries (QSubs). Eligible single-owner disregarded entities and QSubs are treated as separate entities for employment tax purposes. Eligible single-member entities that have not elected to be taxed as corporations must report and pay employment taxes on compensation paid to their employees using the entities' own names and EINs. See Regulations sections 1.1361-4(a)(7) and 301.7701-2(c)(2)(iv).

Where To File

Send Form CT-1 to:

Department of the Treasury
Internal Revenue Service
Cincinnati, OH 45999-0007

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When To File

File Form CT-1 by March 2, 2015.

Definitions

The terms "employer" and "employee" used in these instructions are defined in section 3231 and in its regulations.

Compensation

Compensation means payment in money, or in something that may be used instead of money, for services performed as an employee of one or more employers. It includes payment for time lost as an employee. A few exceptions are described below under *Exceptions*.

Group-term life insurance. Include in compensation the cost of group-term life insurance over $50,000 you provide to an employee. This amount is subject to Tier 1 and Tier 2 taxes, but not to federal income tax withholding. Include this amount on your employee's Form W-2, Wage and Tax Statement.

Former employees for whom you paid the cost of group-term life insurance over $50,000 must pay the employee's share of these taxes with their Form 1040, U.S. Individual Income Tax Return. You are not required to collect those taxes. For former employees, you must include on Form W-2 the part of compensation that consists of the cost of group-term life insurance over $50,000 and the amount of

railroad retirement taxes owed by the former employee for coverage provided after separation from service. For more information, see section 2 of Pub. 15-B and the General Instructions for Forms W-2 and W-3.

Timing. Compensation is considered paid when it is actually paid or when it is constructively paid. It is constructively paid when it is set apart for the employee, or credited to an account the employee can control, without any substantial limit or condition on how and when the payment is to be made.

Any compensation paid during the current year that was earned in a prior year is taxable at the current year's tax rates; you must include the compensation with the current year's compensation on Form CT-1, lines 1-12, as appropriate. An exception applies to nonqualified deferred compensation that was subject to Tier 1 and Tier 2 tax in a prior year. See the rules for social security, Medicare, and FUTA taxes under *Nonqualified Deferred Compensation Plans* in Pub. 15-A.

Exceptions. Compensation does not include:

• Certain benefits provided to or on behalf of an employee if at the time the benefits are provided it is reasonable to believe the employee can exclude such benefits from income. For information on what benefits are excludable, see Pub. 15-B. Examples of this type of benefit include:

1. Certain employee achievement awards under section 74(c),

2. Certain scholarship and fellowship grants under section 117,

3. Certain fringe benefits under section 132, and

4. Employer payments to an Archer MSA under section 220 or health savings accounts (HSA) under section 223.

• Stock transferred to an individual pursuant to the exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)); or the disposition of such stock by the individual.

• Payments made specifically for traveling or other bona fide and necessary expenses that meet the rules in the regulations under section 62.

• Payments for services performed by a nonresident alien temporarily present in the United States as a nonimmigrant under subparagraphs (F), (J), (M), or (Q) of the Immigration and Nationality Act.

• Compensation under $25 earned in any month by an employee in the service of a local lodge or division of a railway-labor-organization employer.

• Payments made to or on behalf of an employee or dependents under a sickness or accident disability plan or a medical or hospitalization plan in connection with sickness or accident disability. This applies to **Tier 2** taxes only.

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For purposes of employee and employer Tier 1 taxes, compensation does not include sickness or accident disability payments made:

1. Under a workers compensation law,

2. Under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness due to an on-the-job injury,

3. Under the Railroad Retirement Act, or

4. More than 6 months after the calendar month the employee last worked.

Employer and Employee Taxes

Tax Rates and Compensation Bases

Tax Rates	Compensation Paid in 2014
Tier 1	
Employer and Employee: Each pay 6.2% of first	$117,000
Tier 1 Medicare	
Employer and Employee: Each pay 1.45% of	All
Tier 1 Employee Additional Medicare Tax withholding	
Employee: Pays 0.9% on compensation exceeding	$200,000

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Tier 2

Employer: Pays 12.6% of first	$87,000
Employee: Pays 4.4% of first	$87,000

Employer Taxes

Employers must pay both Tier 1 and Tier 2 taxes, except for Tier 1 Employee Additional Medicare Tax. Tier 1 tax is divided into two parts. The amount of compensation subject to each tax is different. See the table above for the 2014 tax rates and compensation bases.

Concurrent employment. If two or more related corporations that are rail employers employ the same individual at the same time and pay that individual through a common paymaster that is one of the corporations, the corporations are considered a single employer. They have to pay, in total, no more in railroad retirement taxes than a single employer would. See Regulations section 31.3121 (s)-1 for more information.

Successor employers. Successor employers should see section 3231(e)(2)(C) and Pub. 15 (Circular E) to see if they can use the predecessor's compensation paid against the maximum compensation bases.

Employee Taxes

You must withhold the employee's part of Tier 1 and Tier 2 taxes. See the table under *Employer and Employee Taxes*, earlier, for the tax rates and compensation bases. See *Tips* below for information on the employee tax on tips.

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Withholding or payment of employee tax by employer. You must collect the employee railroad retirement tax from each employee by withholding it from the compensation on which the employee tax is computed. If you do not withhold the employee tax, you must still pay the tax. If you withhold too much or too little tax because you cannot determine the correct amount, correct the amount withheld by an adjustment, credit, or refund according to the applicable regulations.

If you pay the railroad retirement tax for your employee rather than withholding it, the amount of the employee's compensation is increased by the amount of that tax. See Rev. Proc. 83-43, 1983-1 C.B. 778, for information on how to figure and report the proper amounts.

Tips. Your employee must report cash tips to you by the 10th day of the month following the month the tips are received. The report should include charged tips you paid over to the employee for charge customers, tips the employee received directly from customers, and tips received from other employees under any tip-sharing arrangement. Both directly and indirectly tipped employees must report tips to you. Cash tips must be reported for every month, unless the cash tips for the month are less than $20. Stop collecting the Tier 1 Employee tax when his or her compensation and tips for tax year 2014 reach $117,000. Collect the Tier 1 Employee Medicare tax for the whole year on all compensation and tips. Collect the Tier 1 Employee Additional Medicare Tax withholding on compensation and tips that exceed $200,000 for the calendar year. Include all tips your

employees reported to you even if you were unable to withhold the employee's share of tax.

An employee must furnish you with a written (or electronic) statement of cash tips, signed by the employee, showing (a) his or her name, address, and social security number; (b) your name and address; (c) the month or period for which the statement is furnished; and (d) the total amount of cash tips. Pub. 1244, Employee's Daily Record of Tips and Report to Employer, a booklet for daily entry of tips and forms to report tips to employers, is available at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Tips are considered to be paid at the time the employee reports them to you. You must collect both federal income tax and employee railroad retirement tax on cash tips reported to you from the employee's compensation (after withholding employee railroad retirement and federal income tax related to the nontip compensation) or from other funds the employee makes available. Apply the compensation or other funds first to the railroad retirement tax and then to federal income tax. You do not have to pay employer railroad retirement taxes on tips.

If, by the 10th of the month after the month you received an employee's tip income report, you do not have enough employee funds available to withhold the employee tax, you may report the excess amount without withholding the related tax. Report uncollected Tier 1 Employee tax, Tier 1 Employee Medicare tax, Tier 1 Employee Additional Medicare Tax withholding, and Tier

2 Employee tax on tips on line 14. See section 6 in Pub. 15 (Circular E).

Depositing Taxes

For Tier 1 and Tier 2 taxes, you are either a monthly schedule depositor or a semiweekly schedule depositor. However, see the ***$2,500 Rule*** and the ***$100,000 Next-Day Deposit Rule*** under ***Exceptions to the Deposit Rules***, later. The terms "monthly schedule depositor" and "semiweekly schedule depositor" identify which set of rules you must follow when a tax liability arises (for example, when you have a payday). They do not refer to how often your business pays its employees or to how often you are required to make deposits.

If you were a monthly schedule depositor for the entire year, please complete the ***Monthly Summary of Railroad Retirement Tax Liability*** in Part II of Form CT-1. If you were a semiweekly schedule depositor during any part of the year or you accumulated $100,000 or more on any day during a deposit period, you must complete Form 945-A, Annual Record of Federal Tax Liability.

Lookback Period

Before each year begins, you must determine the deposit schedule to follow for depositing Tier 1 and Tier 2 taxes for a calendar year. This is determined from the total taxes reported on your Form CT -1 for the calendar year lookback period. The lookback period is the second calendar year preceding the current calendar year. For

example, the lookback period for calendar year 2015 is calendar year 2013.

Use the table below to determine which deposit schedule to follow for 2015.

IF you reported taxes for the lookback period (2013) of ...	**THEN for 2015 you are a ...**
$50,000 or less	Monthly schedule depositor
More than $50,000	Semiweekly schedule depositor

Example. Employer A reported Form CT-1 taxes as follows:

- 2013 Form CT-1-$49,000
- 2014 Form CT-1-$52,000

Employer A is a monthly schedule depositor for 2015 because its Form CT-1 taxes for its lookback period (calendar year 2013) were not more than $50,000. However, for 2016, Employer A is a semiweekly schedule depositor because A's taxes exceeded $50,000 for its lookback period (calendar year 2014).

New employer. If you are a new employer, your taxes for both years of the lookback period are considered to be zero. Therefore, you are a monthly schedule depositor for the first and second years of your business. However, see *$100,000 Next-Day Deposit Rule*, later.

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Adjustments and the lookback rule. To determine the amount of taxes paid for the lookback period, use only the Form CT-1 taxes reported on your original return. Adjustments to a return for a prior period are not taken into account in determining the taxes for that prior period.

Example. Employer B originally reported Form CT-1 taxes of $45,000 for the lookback period (2013). B discovered in March 2015 that the tax during the lookback period (2013) was understated by $10,000 and will correct this error with an adjustment on Form CT-1 X filed for 2013.

B is a monthly schedule depositor for 2015 because the lookback period Form CT-1 taxes are based on the amount originally reported ($45,000), which was not more than $50,000. For purposes of the lookback rule, the $10,000 adjustment does not affect either 2013 taxes or 2015 taxes. See Treasury Decision 9405 at *www-irs.gov/irb/2008-32_IRB/ar13.html.*

When To Deposit

Monthly Schedule Depositor

If you are a monthly schedule depositor, deposit employer and employee Tier 1 and Tier 2 taxes accumulated during a calendar month by the 15th day of the following month.

Example. Employer C is a monthly schedule depositor with seasonal employees. C paid compensation each Friday during March but did not pay any compensation

during April. Under the monthly schedule deposit rule, C must deposit the combined taxes for the March paydays by April 15. C does not have a deposit requirement for April (due by May 15) because no compensation was paid and, therefore, C does not have a tax liability for the month.

Semiweekly Schedule Depositor

If you are a semiweekly schedule depositor, use the table below to determine when to make deposits.

Deposit Tier 1 and Tier 2 taxes for payments made on ...	**No later than ...**
Wednesday, Thursday, and/or Friday	The following Wednesday
Saturday, Sunday, Monday, and/or Tuesday	The following Friday

Example. Employer D, a semiweekly schedule depositor, pays compensation on the last Saturday of each month. Although D is a semiweekly schedule depositor, D will deposit just once a month because D pays compensation only once a month. The deposit, however, will be made under the semiweekly deposit schedule as follows: D's taxes for the May 30, 2015 (Saturday), payday must be deposited by June 5, 2015 (Friday). Under the semiweekly deposit rule, taxes arising on Saturday through Tuesday must be deposited by the following Friday.

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The last day of the calendar year ends the semiweekly deposit period and begins a new one.

Deposits on Business Days Only

If a deposit is required to be made on a day that is not a business day, the deposit is considered to have been made timely if it is made by the close of the next business day. A business day is any day other than a Saturday, Sunday, or legal holiday. For example, if a deposit is due on a Friday and Friday is a legal holiday, the deposit will be considered timely if it is made by the following Monday (if that Monday is a business day). The term "legal holiday" for deposit purposes includes only those legal holidays in the District of Columbia. For a list of legal holidays, see Pub. 15 (Circular E).

Semiweekly schedule depositors will always have at least 3 business days to make a deposit. If any of the 3 weekdays after the end of a semiweekly period is a legal holiday, you have 1 additional day to deposit. For example, if you have Form CT-1 taxes accumulated for payments made on Friday and the following Monday is a legal holiday, the deposit normally due on Wednesday may be made on Thursday (allowing 3 business days to make the deposit).

Exceptions to the Deposit Rules

The two exceptions that apply to the above deposit rules are the:

- $2,500 Rule, and

- $100,000 Next-Day Deposit Rule.

$2,500 Rule. If your total Form CT-1 taxes for the year are less than $2,500 and the taxes are fully paid with a timely filed Form CT-1, no deposits are required. However, if you are unsure that you will accumulate less than $2,500, deposit under the appropriate deposit rules so that you will not be subject to deposit penalties.

$100,000 Next-Day Deposit Rule. If you accumulate undeposited taxes of $100,000 or more on any day during a deposit period, you must deposit the taxes by the next business day regardless of whether you are a monthly or semiweekly schedule depositor.

If you are a monthly schedule depositor and you accumulate $100,000 or more on any one day during the month, you become a semiweekly schedule depositor on the next day for the remainder of the calendar year and for the following year.

Once a semiweekly schedule depositor accumulates $100,000 or more in a deposit period, it must stop accumulating at the end of that day and begin to accumulate anew on the next day. The following examples explain this rule.

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Example of $100,000 Next-Day Deposit Rule. Employer E is a semiweekly schedule depositor. On Monday, E accumulates taxes of $110,000 and must deposit this amount by Tuesday, the next business day. On Tuesday, E accumulates additional taxes of $30,000. Because the $30,000 is not added to the previous $110,000, E must deposit the $30,000 by Friday using the semiweekly deposit schedule.

Example of $100,000 Next-Day Deposit Rule during the first year of business. Employer F started its business on May 1, 2015. Because this was the first year of its business, its Form CT-1 taxes for its lookback period (2013) are considered to be zero, and F is a monthly schedule depositor. On May 2, F paid compensation for the first time and accumulated taxes of $40,000. On May 8, F paid compensation and accumulated taxes of $60,000, bringing its total accumulated (undeposited) taxes to $100,000. Because F accumulated $100,000 or more on May 8 (Friday), F must deposit the $100,000 by May 11 (Monday), the next business day. F became a semiweekly schedule depositor on May 9. F will be a semiweekly schedule depositor for the rest of 2015 and for 2016.

Example of when $100,000 Next-Day Deposit Rule does not apply. Employer G, a semiweekly schedule depositor, accumulated taxes of $95,000 on a Tuesday (of a Saturday-through-Tuesday deposit period) and accumulated $10,000 on Wednesday (of a Wednesday-through-Friday deposit period). Because the $10,000 was accumulated in a deposit period different from the one in which the $95,000 was accumulated, the $100,000

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Next-Day Deposit Rule does not apply. Thus, G must deposit $95,000 by Friday and $10,000 by the following Wednesday.

Electronic Deposit Requirement

You must use EFT to make all federal tax deposits. Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). To get more information about EFTPS or to enroll in EFTPS, visit the EFTPS website at *www.eftps.gov*, or call 1-800-555-4477 or 1-800-733-4829 (TDD). Additional information about EFTPS is also available in Pub. 966.

For an EFTPS deposit to be on time, you must submit the deposit by 8 p.m. Eastern time the day before the date the deposit is due.

Same-day wire payment option. If you fail to submit a deposit transaction on EFTPS by 8 p.m. Eastern time the day before the date a deposit is due, you can still make your deposit on time by using the Federal Tax Collection Service (FTCS). To use the same-day wire payment method, you will need to make arrangements with your financial institution ahead of time. Please check with your financial institution regarding availability, deadlines, and costs. Your financial institution may charge you a fee for payments made this way. To learn more about the information you will need to provide your financial institution to make a same-day wire payment, visit *www.irs.gov/e-pay* and click on *Same-Day Wire Federal Tax Payments.*

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Accuracy of Deposits Rule. You are required to deposit 100% of your railroad retirement taxes on or before the deposit due date. However, penalties will not be applied for depositing less than 100% if both of the following conditions are met.

1. Any deposit shortfall does not exceed the greater of $100 or 2% of the amount of taxes otherwise required to be deposited.

2. The deposit shortfall is paid or deposited by the shortfall makeup date for each type of depositor as described below.

• **Monthly schedule depositor.** Deposit the shortfall or pay it with your return by the due date of Form CT-1. You may pay the shortfall with Form CT -1 even if the amount is $2,500 or more.

• **Semiweekly schedule depositor.** Deposit the shortfall by the earlier of the first Wednesday or Friday on or after the 15th of the month following the month in which the shortfall occurred. For example, if a semiweekly schedule depositor has a deposit shortfall during January 2015, the shortfall makeup date is February 18, 2015 (Wednesday).

Penalties and Interest

The law provides penalties for failure to file a return, late filing of a return, late payment of taxes, failure to make deposits, and late deposits unless reasonable cause is shown. Interest is charged on taxes paid late at the rate set by law. For more information, see Pub. 15 (Circular E).

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If you receive a notice about a penalty after you file this return, reply to the notice with an explanation and we will determine if you meet reasonable-cause criteria. Do **not** attach an explanation when you file your return.

Use Form 843, Claim for Refund and Request for Abatement, to request abatement of assessed penalties or interest. Do not request abatement of assessed penalties or interest on Form CT-1 or Form CT-1 X.

Order in which deposits are applied. Generally, tax deposits are applied first to the most recent tax liability within the specified tax period to which the deposit relates. If you receive a failure-to-deposit penalty notice, you may designate how your payment is to be applied in order to minimize the amount of the penalty. You must respond within 90 days of the date of the notice. Follow the instructions on the notice you received. See Rev. Proc. 2001-58 for more information. You can find Rev. Proc. 2001-58 on page 579 of Internal Revenue Bulletin 2001-50 at *www.irs.gov/pub/irs-irbs/irb01-50.pdf.*

Trust fund recovery penalty. If taxes that must be withheld are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is 100% of the unpaid taxes. If these unpaid taxes cannot be immediately collected from the employer or business, the trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, or paying over these taxes, and who acted willfully in not doing so. For more information, see *Trust fund recovery penalty* in section 11 of Pub. 15 (Circular E).

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Specific Instructions

Final Return

If you stop paying taxable compensation and will not have to file Form CT-1 in the future, you must file a final return and check the *Final return* box at the top of Form CT-1 under "2014." This final return should furnish information showing the last date on which you paid compensation you reported on Form CT-1.

The final return should be accompanied by a statement providing the address at which the records for your Forms CT-1 will be kept and the name of the person keeping the records. If the business has been transferred to another person, the statement should include the name and address of the transferee and the date of the transfer. If the business was not transferred or the transferee is not known, the statement should so state. The statement should be furnished in duplicate.

Processing of your return may be delayed if you do not provide the required amounts in the Compensation *and* Tax *columns.*

Line 1—Tier 1 Employer Tax

Enter the compensation (other than tips and sick pay) subject to Tier 1 Employer tax in the *Compensation* column. Multiply by 6.2% and enter the result in the *Tax* column. The total amount listed in the *Compensation* column for lines 1 and 8 combined may not be more than $117,000 per employee.

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Line 2—Tier 1 Employer Medicare Tax

Enter the compensation (other than tips and sick pay) subject to Tier 1 Employer Medicare tax in the *Compensation* column. Multiply by 1.45% and enter the result in the *Tax* column.

Line 3—Tier 2 Employer Tax

Enter the compensation (other than tips) subject to Tier 2 Employer tax in the *Compensation* column. Do not enter more than $87,000 per employee. Multiply by 12.6% and enter the result in the *Tax* column.

Line 4—Tier 1 Employee Tax

Enter the compensation, including tips reported (but excluding sick pay), subject to Tier 1 Employee tax in the *Compensation* column. Multiply by 6.2% and enter the result in the *Tax* column. The total amount listed in the *Compensation* column for lines 4 and 10 combined may not be more than $117,000 per employee.

Stop collecting the 6.2% Tier 1 **Employee** tax when the employee's compensation (including sick pay) **and tips** reach the maximum for the year ($117,000 for 2014). However, your liability for Tier 1 **Employer** tax on compensation continues until the compensation (including sick pay), but **not including tips**, totals $117,000 for the year.

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Line 5—Tier 1 Employee Medicare Tax

Enter the compensation, including tips reported (but excluding sick pay), subject to Tier 1 Employee Medicare tax in the *Compensation* column. Multiply by 1.45% and enter the result in the *Tax* column. For information on reporting tips, see *Tips*, earlier.

Line 6—Tier 1 Employee Additional Medicare Tax Withholding

Enter the compensation, including tips reported (but excluding sick pay) that is subject to Tier 1 Employee Additional Medicare Tax withholding. You are required to begin withholding Tier 1 Employee Additional Medicare Tax in the pay period in which you pay compensation in excess of $200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Tier 1 Employee Additional Medicare Tax is only imposed on the employee. There is no employer share of Tier 1 Additional Medicare Tax. All compensation (including sick pay) that is subject to Tier 1 Medicare tax is subject to Tier 1 Employee Additional Medicare Tax if paid in excess of the $200,000 withholding threshold.

Visit IRS.gov and enter "Additional Medicare Tax" in the search box for more information on Tier 1 Employee Additional Medicare Tax.

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Line 7—Tier 2 Employee Tax

Enter the compensation, including tips reported, subject to Tier 2 Employee tax in the *Compensation* column. Only the first $87,000 of the employee's compensation (including tips) for 2014 is subject to this tax. Multiply by 4.4% and enter the result in the *Tax* column. For information on reporting tips, see *Tips,* earlier.

Any compensation paid during the current year that was earned in prior years (reported to the Railroad Retirement Board on Form BA-4, Report of Creditable Compensation Adjustments) is taxable at the current year tax rates, unless special timing rules for non qualified deferred compensation apply. See Publication 15-A. Include such compensation with current year compensation on lines 1-7, as appropriate.

Lines 8–12—Tier 1 Taxes on Sick Pay

Enter any sick pay payments during the year that are subject to Tier 1 taxes, Tier 1 Medicare taxes, and Tier 1 Employee Additional Medicare Tax withholding in the *Compensation* column. Multiply by the rate for the line and enter the result in the *Tax* column for that line. For Tier 1 Employer taxes, the total amount listed in the *Compensation* column for lines 1 and 8 combined may not be more than $117,000 per employee. For Tier 1 Employee taxes, the total amount listed in the *Compensation* column for lines 4 and 10 combined may not be more than $117,000 per employee. Tier 1 Medicare taxes are not subject to a dollar limitation.

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All compensation (including sick pay) that is subject to Tier 1 Medicare tax is subject to Tier 1 Employee Additional Medicare Tax if paid in excess of the $200,000 withholding threshold.

If you are a railroad employer paying your employees sick pay, or a third-party payer who did not notify the employer of the payments (thereby subject to the employee and employer tax), make entries on lines 8-12. If you are subject to only the employer or employee tax, complete only the applicable lines. Multiply by the appropriate rates and enter the results in the *Tax* column.

Line 13—Total Tax Based on Compensation

Add lines 1 through 12 and enter the result on line 13.

Line 14—Adjustments to Taxes Based on Compensation

Do not use line 14 for prior period adjustments. Make all prior period adjustments on Form CT-1 X.

Enter on line 14:

• A fractions of cents adjustment (see *Adjustment for fractions of cents*, later);

• Credits for overpayments of penalty or interest paid on tax for earlier years; and

• Any uncollected Tier 1 Employee tax, Tier 1 Employee Medicare tax, Tier 1 Employee Additional Medicare Tax, and Tier 2 Employee tax on tips.

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Enter the total of these adjustments in the *Tax* column. If you are reporting both an addition and a subtraction, enter only the difference between the two on line 14. If the net adjustment is negative, report the amount on line 14 using a minus sign, if possible. If your computer software does not allow the use of minus signs, you may use parentheses.

Do not include on line 14 any 2013 overpayment that is applied to this year's return (this is included on line 16).

Required statement. Except for adjustments for fractions of cents, explain amounts entered on line 14 in a separate statement. Include your name, employer identification number (EIN), calendar year of the return, and "Form CT-1" on each page you attach. Include in the statement the following information.

- An explanation of the item the adjustment is intended to correct showing the compensation subject to Tier 1 and Tier 2 taxes and their respective tax rates.

- The amount of the adjustment.

- The name and account number of any employee from whom employee tax was undercollected or overcollected.

- How you and the employee have settled any undercollection or overcollection of employee tax.

Adjustment for fractions of cents. If there is a difference between the total employee tax (lines 4-7 and 10-12) and the total actually withheld (employee compensation including tips plus the employer's contribution) due to rounding fractions of cents when collecting the tax, report the deduction or addition on line 14.

If this is the only entry on line 14, you are not required to attach a statement explaining the adjustment.

Line 15—Total Railroad Retirement Taxes Based on Compensation

Combine the amounts shown on lines 13 and 14 and enter the result on line 15.

Line 16—Total Deposits for the Year

Enter the total Form CT-1 deposits for the year, including any overpayment that you applied from filing Form CT-1 X and any overpayment that you applied from your 2013 return.

Line 17—Balance Due

If line 15 is more than line 16, enter the difference on line 17. Otherwise, see *Overpayment* below. You do not have to pay if line 17 is under $1. Generally, you should show a balance due on line 17 only if your total railroad retirement taxes based on compensation for the year (line 15) is less than $2,500. However, see *Accuracy of Deposits Rule*, earlier, regarding payments made under the accuracy of deposits rule.

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If you were required to make federal tax deposits, pay the amount shown on line 17 by EFT. If you were not required to make federal tax deposits, you may pay the amount shown on line 17 by EFT, check, or money order. For more information on electronic payment options, visit the IRS website at *www.irs.gov/e-pay*.

If you pay by EFT, file your return using the address under *Where To File*, earlier. Do not file Form CT-1(V), Payment Voucher. If you pay by check or money order, make it payable to "United States Treasury." Enter your EIN, Form CT-1, and the tax period on your check or money order. Complete Form CT-1(V) and enclose with Form CT-1.

Line 18—Overpayment

If line 16 is more than line 15, enter the difference on line 18. **Never make an entry on both lines 18 and 17.** If line 18 is less than $1, we will send you a refund or apply it to your next return only if you ask us in writing to do so.

If you deposited more than the correct amount for the year, you can have the overpayment refunded or applied to your next return by checking the appropriate box on line 18. Check only one box on line 18. If you do not check either box or if you check both boxes, generally we will apply the overpayment to your account. We may apply your overpayment to any past due tax account that is shown in our records under your EIN.

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Part II. Record of Railroad Retirement Tax Liability

This is a summary of your yearly tax liability, not a summary of deposits made. If line 15 is less than $2,500, do not complete Part II or Form 945-A.

If you are a monthly schedule depositor, enter your tax liability for each month and figure the total liability for the year. If you do not enter your tax liability for each month, the IRS will not know when you should have made deposits and may assess an "averaged" failure-to-deposit penalty. See section 11 of Pub. 15 (Circular E). If your tax liability for any month is negative (for example, if you are adjusting an overreported liability in a prior month), do not enter a negative amount for the month. Instead, enter zero for the month and subtract that negative amount from your tax liability for the next month.

Note. The amount shown on line V must equal the amount shown on line 15.

If you are a semiweekly schedule depositor or if you accumulate $100,000 or more in tax liability on any day in a deposit period, you must complete Form 945-A and file it with Form CT-1. Do not complete lines I-V if you file Form 945-A.

Third-Party Designee

If you want to allow an employee of your business, a return preparer, or another third party to discuss your 2014 Form CT-1 with the IRS, check the "Yes" box in the "Third-

Party Designee" section. Also, enter the designee's name, phone number, and any five digits that person chooses as his or her personal identification number (PIN).

By checking the "Yes" box, you are authorizing the IRS to speak with the designee to answer any questions relating to the processing of or the information reported on Form CT-1 . You are also authorizing the designee to do all of the following.

• Give the IRS any information that is missing from your return.

• Call the IRS for information about processing your return.

• Respond to certain IRS notices that you have shared with the designee about math errors and return preparation. The IRS will not send notices to your designee.

You are not authorizing the designee to receive any refund check, bind you to anything (including additional tax liability), or otherwise represent you before the IRS. If you want to expand the designee's authority, see Pub. 947, Practice Before the IRS and Power of Attorney.

The authorization will automatically expire 1 year from the due date (without regard to extensions) for filing your 2014 Form CT-1. If you or your designee wants to revoke this authorization, send the revocation or withdrawal to the IRS office at which you file your Form CT-1. See Pub. 947 for more information.

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Who Must Sign

The following persons are authorized to sign the return for each type of business entity.

• **Sole proprietorship**—The individual who owns the business.

• **Corporation (including a limited liability company (LLC) treated as a corporation)**—The president, vice president, or other principal officer duly authorized to sign.

• **Partnership (including an LLC treated as a partnership) or unincorporated organization**—A responsible and duly authorized partner, member, or officer having knowledge of its affairs.

• **Single member LLC treated as a disregarded entity for federal income tax purposes**—The owner of the LLC or a principal officer duly authorized to sign.

• **Trust or estate**—The fiduciary.

Form CT-1 also may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

Alternative Signature method. Corporate officers or duly authorized agents may sign Form CT-1 by rubber stamp, mechanical device, or computer software program. For details and required documentation, see Rev. Proc.

2005-39, 2005-28 I.R.B. 82, at *www.irs.gov/irb/200 28_IRB/ar16.html.*

Paid Preparer Use Only

A paid preparer must sign Form CT-1 and provide the information in the *Paid Preparer Use Only* section of Part I if the preparer was paid to prepare Form CT-1 and is not an employee of the filing entity. The preparer must give you a copy of the return in addition to the copy to be filed with the IRS.

If you are a paid preparer, write your preparer tax identification number (PTIN) in the space provided. Include your complete address. If you work for a firm, write the firm's name and the EIN of the firm. You can apply for a PTIN at *www.irs.gov/ptin*, or by filing Form W-12, IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal. You cannot use your PTIN in place of the EIN of the tax preparation firm.

Generally, you are not required to complete this section if you are filing the return as a reporting agent and have a valid Form 8655, Reporting Agent Authorization, on file with the IRS. However, a reporting agent must complete this section if the reporting agent offered legal advice, for example, by advising the client on determining whether its workers are employees or independent contractors for federal tax purposes.

APPENDIX E — RAILROAD RETIREMENT INFORMATION PAMPHLET, DATED MAY 2008

RAILROAD RETIREMENT INFORMATION
U.S. RAILROAD RETIREMENT BOARD

Office of Public Affairs 844 North Rush Street
Chicago, Illinois 60611-2092
312-751-4777
312-751-7154 (fax)

For Publication May 2008

Railroad Retirement Service Credits and Pay for Time Lost

The Railroad Retirement Board (RRB) frequently receives questions from railroad employers, employees, and employees' legal advisors about the RRB's treatment of pay for time lost in retirement cases. The most common type of pay for time lost situation arises out of personal injury settlements. Other types include dismissal allowances, guaranteed wages, displacement allowances paid for loss of earnings resulting from the employee being placed in a position or occupation paying less money, and reinstatement awards which include back pay.

It is important that agreements between employers and employees involving pay for time lost are structured correctly for railroad retirement purposes because they are often intended to provide an employee with additional months of creditable service needed to qualify for railroad retirement benefits. Crediting fewer service months than intended may leave an employee ineligible for benefits,

while crediting an excessive number of months may delay the beginning date of those benefits. The following questions and answers describe the requirements for the crediting of pay for time lost under railroad retirement.

1. How do the railroad retirement laws treat pay for time lost?

Pay for time lost attributable to lost earnings for an identifiable period of absence from active service is treated as compensation creditable under the Railroad Retirement and Railroad Unemployment Insurance Acts. Since the intent of an award for pay for time lost is to treat the employee as if he or she had actually performed compensated service during that period of time, the effect upon railroad retirement eligibility and benefits is identical to the effect of regular earnings for which service and compensation credit is received.

2. What factors should be taken into account to ensure that pay for time lost will be creditable for railroad retirement purposes?

A payment must be made with respect to an identifiable period of time. The specific months during the period of absence from active service must be identified, for example "the 12 month period beginning June 2007 and ending May 2008." In the case of a payment for personal injury, the entire amount is considered pay for time lost unless, at the time of payment, the employer states that a particular amount of the payment was for other reasons. The compensation is considered earned in, and therefore creditable to, the specified period.

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An employment relationship must exist in the months to be credited with pay for time lost. Allocation toward future months is permissible as long as an employment relation is retained for that period. If a settlement agreement requires that an employee resign to receive the payment, the employment relation ceases upon resignation. Allocation after the resignation date is not allowed because it cannot be considered time lost as an employee. With respect to pay for time lost allocated into the future, service months and compensation are not creditable until the time lost has actually elapsed.

The allocation must also relate to the actual period of absence from service for which payment is made. Pay for time lost due to personal injury may not be allocated to service months missing from an employee's record before the date of injury. Similarly, the amount of the pay for time lost must relate to an employee's normal monthly pay. A monthly allocation of at least ten times the employee's daily pay rate in effect on the date of injury is ordinarily considered a reasonable relationship to actual lost earnings. A lesser amount would be considered a token payment and would not be acceptable. For example, if an employee normally earns $130 a day, the amount of pay for time lost allocated to each month should be at least $1,300.

3. What other factors should be considered to ensure that pay for time lost correctly provides the total of railroad retirement service months intended?

It is of primary importance to have a precise breakdown of an employee's service prior to any allocation. As a starting point, an employee should check his or her

most recent Form BA-6, or the employee may request a service and compensation statement from the RRB. This will avoid allocating pay for time lost to a month or months already reported as service months. Occasionally, an employee will have service months reported for vacation pay, or by another railroad employer--for example, by reason of paid union activity. Credit can only be received once for any given month. Because the period specified is the period for which service credit is due, a month allocated to the same month already on record may result in a shortage of the total months desired.

In addition, deemed service months should not be considered in the number of total service months when an allocation period is determined if those deemed service months are within the allocation period. A pay for time lost allocation increasing service and compensation will generally eliminate or reduce the number of deemed service months on record for any affected year. Deemed service months are the product of a calculation. If the components of that calculation change as the result of an adjustment to service and compensation due to a payment for time lost, then the number of deemed service months to which an employee is entitled is likely to change.

Also, the possibility that an employee has creditable military service should be considered because such military service may not be reflected in the RRB's records and may reduce the number of allocated months needed to attain annuity eligibility. Employees are encouraged to file proof of any military service well in advance of retirement so the RRB can determine whether the military service is creditable as railroad service. The RRB will include

creditable military service in its records, which will expedite the annuity application process and also ensure that the RRB's records of an employee's service are as complete as possible.

4. Is pay for time lost subject to railroad retirement tier I and tier II payroll taxes and/or employer contributions under the Railroad Unemployment Insurance Act?

Yes. As with all compensation, pay for time lost is subject to taxation under the Railroad Retirement Tax Act at the tier I and tier II tax rates and annual maximum earnings bases in effect when payment is made. Pay for time lost is not, however, creditable on the basis of when the payment is made, but to the period for which the payment is allocated. Therefore, the taxable amount and creditable amount will sometimes differ. The employee's portion of the railroad retirement tax liability is usually withheld from the gross amount of the award.

Unlike tier I and tier II taxes, the amount of the employer contributions due under the Railroad Unemployment Insurance Act is computed at the rates in effect, subject to a monthly limit, during the months to which the payment is allocated.

5. What effect would pay for time lost have on the payment of a railroad retirement annuity or unemployment or sickness benefits for the same days?

Because pay for time lost is considered earned in the month allocated, an employee is not entitled to an annuity

under the Railroad Retirement Act with respect to any months to which pay for time lost has been allocated. If an employee applies for retirement benefits at the expiration of an allocation period, he or she should submit documentation of the period covered by the agreement with the application.

Similarly, an employee is not entitled to unemployment or sickness benefits under the Railroad Unemployment Insurance Act with respect to any months to which pay for time lost has been allocated. If a payment for time lost is made which covers a period for which benefits under the Railroad Unemployment Insurance Act were previously paid, the benefits would be subject to recovery.

6. Where can someone get more information about pay for time lost?

Additional information on pay for time lost, as well as other railroad retirement topics, is available on the RRB's Web site at www.rrb.gov. In addition, specific questions can be directed to the Railroad Retirement Board's Quality Reporting Service Center, 844 North Rush Street, Chicago, Illinois 60611-2092. Their phone number is (312) 751-4992.

APPENDIX F — PAY FOR TIME LOST FROM REGULAR RAILROAD EMPLOYMENT, PAMPHLET, FILED OCTOBER 21, 2015

TABLES INTENTIONALLY OMITTED

INTRODUCTION

The Railroad Retirement Board (RRB) frequently receives questions from railroad employers and employees and their respective legal agents about the treatment of pay for time lost from regular employment. Because this can be a complex and confusing subject, we have prepared this pamphlet to answer the most commonly asked questions about pay for time lost.

This pamphlet contains general information about pay for time lost. However, certain limitations, exceptions, and special cases are not covered. If you have any question about the information covered in this pamphlet, contact the nearest office of the RRB.

WHAT IS PAY FOR TIME LOST?

Pay for time lost is compensation paid by a railroad employer which is creditable under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) and which is attributable to lost earnings for an identifiable period of absence from active service. ***Pay for time lost is not the purchase of service credits by payment of railroad retirement taxes.***

The intent behind the pay for time lost concept is to treat an employee as if he or she had actually performed

compensated service during an identifiable period of time. The effect of pay for time lost upon eligibility and benefits under the RRA and the RUIA is identical to the effect of regular earnings for which service and compensation credit are received.

The statutory basis for pay for time lost is found in Section 1 (h)(2) of the RRA (45 USC 231(h)(2)), Section 1(h)(i) of the RUIA (45 USC 351(i)), and Sections 211.3 and 322.6 of the Railroad Retirement Board's Regulations (20 CFR 211.3 and 322.6).

The most common type of pay for time lost arises out of "on the job" personal injury settlements, but other types of agreements may have pay for time lost provisions.

WHAT ARE SOME EXAMPLES OF PAY FOR TIME LOST?

Examples of pay for time lost include, but are not necessarily limited to, the following:

- A personal injury award or settlement which allocates a portion of the damages as lost wages for a specific period following the date of the injury.

- A reinstatement award which includes back pay for the period of lost wages.

- A dismissal allowance or guaranteed wage agreement.

- An allowance paid for the loss of earnings resulting from job displacement to a less remunerative position.

WHY IS IT IMPORTANT TO PREVENT PAY FOR TIME LOST PROBLEMS?

Unfortunately, it is not unusual for errors to be made when structuring a pay for time lost agreement and reporting the payment as creditable compensation to the employee's records at the Railroad Retirement Board. Some errors stem from a lack of a clear understanding of the nature of pay for time lost. Other errors occur because payments for time lost are usually made outside the regular payroll process.

It is important that pay for time lost agreements between employers and employees are structured correctly. Frequently, an agreement is established with the intent of attaining additional months of creditable railroad service so an employee will meet the service requirement for an annuity under the Railroad Retirement Act (RRA). If the agreement overlooks certain factors or does not meet the pertinent statutory requirements, the employee may be denied that annuity.

It is also important that pay for time lost be reported as service and compensation correctly and timely. Annuity applications under the RRA and benefit claims under the Railroad Unemployment Insurance Act (RUIA) are adjudicated with the information available on the employee's earnings record. If the record is not updated and if we have no knowledge of additional credit which

should be on the record, RRA annuities to disabled employees or RUTA benefits to sick or unemployed employees may be greatly delayed or even erroneously denied.

HOW DO I ENSURE PAY FOR TIME LOST IS CREDITABLE AS SERVICE AND COMPENSATION?

Six principles must be followed in order to ensure that a payment qualifies as creditable pay for time lost for which service and compensation credit may be received. The six principles are:

1. ***The payment must be made with respect to an identifiable period of time.***

The months of the period of absence from active service must be specified. For example, the agreement should state the pay for time lost is "for the 12 month period beginning October 1994 and ending September 1995." The compensation is considered earned in, and is therefore creditable to, that specified period.

2. ***An employment relationship must exist in the months to be credited with the pay for time lost.***

Pay for time lost may be allocated into the future as long as an employment relationship is retained for that period. If an agreement requires that an employee must resign in order to receive the payment, the employment relationship ceases upon the resignation. An allocation to months after the resignation date is not allowed because

the allocated service months cannot be considered genuine time lost as an employee.

If pay for time lost is allocated into the future and an employee does not resign, the service months are not creditable until the time lost has actually elapsed.

3. The allocation must relate to the actual period of absence from service for which the payment is made.

Pay for time lost due to a personal injury must be allocated to months after the date of the injury. Service months allocated to months missing from an employee's record before the injury is not allowed.

4. The amount of the pay for time lost must relate to an employee's normal monthly pay.

By regulation, a monthly allocation of at least ten times the employee's daily pay rate in effect on the date of the injury is ordinarily considered a reasonable relationship to actual lost wages. A lesser amount is considered to be a token payment and is not acceptable to the Railroad Retirement Board.

For example, Employee Jones had a daily pay rate of $130.00 when he was injured. Therefore, a minimum of $1,300.00 must be allocated as pay for each month allocated as time lost.

A higher compensation amount per month may be allocated, but it cannot exceed the annual maximum earnings base limitations for the years involved. Cost-

of-living or other increases which would have applied to the employee's pay over the period of time lost need not be considered.

5. ***The railroad retirement tax obligation for the pay for time lost must be met.***

Pay for time lost is considered compensation under the Railroad Retirement Tax Act. Thus, an employer is required to withhold and pay the employment taxes due on pay for time lost.

6. ***An agreement for pay for time lost must specify whether or not the intention of the payment is to provide service and compensation credit under the Railroad Retirement Act.***

If you do not intend to receive service and compensation credit for your pay for time lost, the agreement must say that.

ARE THERE ADDITIONAL FACTORS FOR ALLOCATING SERVICE MONTHS IN A PERSONAL INJURY CASE?

When the implicit intent of a personal injury allocation is to provide 120, 240, or 360 service months for the employee's record at the Railroad Retirement Board (RRB), it is vital to ensure that an allocation for time lost correctly provides the total number of service months desired.

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If a shortage of service months occurs, the RRB has no authority to reallocate months. The allocation may be reopened only if both parties to the settlement are agreeable. However, it is important to note that the RRB will accept a re-opened agreement with respect to pay for time lost only within the four year time limitation imposed by Section 9 of the Railroad Retirement Act.

To prevent a shortage of service months, these three factors affecting service months must be considered:

1. ***Do not allocate pay for time lost to a month or months for which the employee has already received service month credit.***

Occasionally, an employee has service months reported for vacation pay or service months reported by another railroad employer (for example, union activity). However, credit can be received only one time for any given month.

Because the period specified is the period for which service credit is due, a month allocated to the same month already on record may result in a shortage of the total months desired. To prevent the duplicate reporting of service months, always contact the nearest office of the Railroad Retirement Board for an exact accounting of the months on record as of the date of the request.

Sometimes an award of back pay is for the same months for which service is already credited. In such a case, even though the months are not creditable, the compensation from the award is creditable.

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2. ***When an allocation period is determined, do not consider deemed service months after the date of the personal injury in the total number of service months.***

A pay for time lost allocation increasing service and compensation will generally eliminate or reduce the number of deemed service months on record for any affected year. This is true because deemed service months are the product of a calculation. If the components of that calculation change as the result of an adjustment to service and compensation due to a payment for time lost, then the number of deemed service months to which an employee is entitled is likely to change.

3. ***Military service may, under certain conditions, be counted as railroad service under the Railroad Retirement Act (RRA).***

Creditable military service is not currently maintained in the records of the Railroad Retirement Board (RRB). The possibility that an employee has military service which meets the requirements to be creditable under the RRA should be considered because creditable military service may reduce the number of allocated months needed to attain eligibility for an annuity.

Contact the nearest office of the RRB for assistance in determining whether a military service period is creditable. Be prepared to provide proof of that military service to the RRB.

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HOW IS PAY FOR TIME LOST ALLOCATED WHEN THERE IS A COURT ORDERED JUDGMENT?

When an employer pays an employee a settlement for a personal injury, the whole amount of the settlement is considered pay for time lost, ***if there is no designation that the settlement amount, or any part of it, is for factors other titan pay for time lost.***

When an employee receives a court ordered judgment as the result of a personal injury action against an employer, the employer and the employee may reach an agreement as to what amount of the judgment is attributable to time lost, ***if the judgment does not indicate that any amount of it is attributable for time lost.***

Absent an agreement between the employer and the employee, the Railroad Retirement Board (RRB) has the authority to determine what, if any, amount of the judgment is attributable to pay for time lost. The RRB's determination is based upon the pleadings and evidence submitted at the trial. ***Unlike the case of a settlement of a personal injury action, the payment to an employee by way of a judgment does not automatically result in a pay for time lost allocation.***

HOW IS PAY FOR TIME LOST TAXED FOR RETIREMENT PURPOSES?

All compensation under the Railroad Retirement Tax Act (RRTA) is subject to the Tier I and Tier II tax rates and the annual maximum earnings bases in effect when the payment is made. This is also true of pay for time lost.

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The nature of pay for time lost is such that the payment is attributable to lost earnings in a different time period. Therefore, it is creditable, for retirement purposes under the Railroad Retirement Act, to the months to which the time lost payment relates. ***But, the taxation of the payment under the RRTA always relates to the calendar year in which the payment is made.***

HOW CAN THERE BE, FOR RETIREMENT PURPOSES, INCONSISTENT TAXING AND CREDITING OF THE SAME PAYMENT?

If a payment for time lost is allocated to a period other than the year of payment, the taxable amount and creditable amount of the pay for time lost may differ. There are circumstances where pay for time lost may be fully creditable under the Railroad Retirement Act, but taxable only to a limited extent, or not taxable at all, under the Railroad Retirement Tax Act. On the other hand, pay for time lost may be taxed at a higher percentage rate and subject to a higher earnings base than it would have been had it actually been paid in the period for which it is considered creditable.

HOW IS PAY FOR TIME LOST TAXED FOR MEDICARE PURPOSES?

Medicare taxes must be withheld from a payment for time lost. The railroad retirement and Medicare parts of the Tier I tax rate have separate, different earnings bases. When an employee's taxable earnings attain the Tier I maximum earnings base, Medicare taxes must continue

to be deducted because there is no Medicare maximum amount.

HOW IS PAY FOR TIME LOST TAXED FOR UNEMPLOYMENT/SICKNESS PURPOSES?

Unlike Tier I and Tier II tax, the amount of the employer contributions due under the Railroad Unemployment Insurance Act is computed at the rates in effect, subject to a monthly limit, during the months to which the pay for time lost payment relates.

IS THE TAX LIABILITY OF PAY FOR TIME LOST MET BY WITHHOLDING A REIMBURSEMENT AMOUNT FOR BENEFITS RECOVERABLE UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT (RUIA)?

Reimbursement is due under the RUIA if a payment for time lost covers a period for which sickness or unemployment benefits were previously paid. However, withholding this amount from the award is a separate matter and should never be confused with satisfying the railroad retirement tax liability for the award.

WHERE CAN I GET INFORMATION ABOUT TAX RATES AND EARNINGS BASES?

Information about the annual tax rate percentages, maximum earnings base amounts, and employer contribution amounts for any year may be obtained from the nearest office of the Railroad Retirement Board. The

payroll department of any railroad employer should also be able to provide this information.

IF I'M NOT WORKING, CAN I PURCHASE ADDITIONAL SERVICE MONTHS BY PAYING ADDITIONAL TAXES?

An employee who is not working may not buy additional service months simply by paying the taxes for the months desired. ***Service months may never be bought just by tile payment of taxes.***

IS PAY FOR TIME LOST INCLUDABLE AS WAGES FOR INCOME TAX PURPOSES?

The Railroad Retirement Board cannot speak authoritatively on issues involving income tax law. Therefore, we must refer questions relating to the treatment of pay for time lost under federal income tax laws to the Internal Revenue Service (IRS). However, we can advise that, in the past, under certain conditions, the IRS has held that pay for time lost is includable as wages for income tax purposes.

DOES WITHHOLDING THE CORRECT TAX AMOUNT UPDATE MY SERVICE AND COMPENSATION RECORD?

Withholding the proper taxes is not sufficient to update an employee's record of service and compensation at the Railroad Retirement Board (RRB). An appropriate report of service and compensation must also be submitted by the

employee's railroad employer. As noted previously, pay for time lost should be reported as service and compensation for the allocated period of absence because it is considered earned under the Railroad Retirement Act in that period.

An employee applying for retirement benefits at the expiration of an allocation period should submit documentation of the period covered by the agreement with the retirement application. This is necessary to establish service eligibility if the report for additional service credit is not yet reflected in the employee's records at the RRB. The RRB will then solicit the necessary service and compensation report, but the final annuity award must be delayed until the report is received.

HOW DOES PAY FOR TIME LOST AFFECT MY ENTITLEMENT TO AN ANNUITY OR SICKNESS/ UNEMPLOYMENT BENEFITS?

Because pay for time lost is effectively the same as compensated service for active employment, an employee is not entitled to an annuity under the Railroad Retirement Act with respect to any months to which pay for time lost has been allocated. For this reason, a pay for time lost allocation to an employee who is already receiving an annuity may cause an annuity overpayment.

For example, an injured employee may apply for and begin receiving a disability annuity while his settlement is pending. If the settlement is finalized and includes pay for time lost for months for which he was also paid an annuity, the annuity is overpaid for those months.

Similarly, an employee is also not entitled to sickness or unemployment benefits under the Railroad Unemployment Insurance Act (RUIA) with respect to any month to which pay for time lost is allocated. If a payment for time lost is made which covers a period for which benefits under the RUIA were previously paid, a reimbursement is due under the RUIA.

WHERE CAN I GET MORE INFORMATION?

The Claims Adjustment and Settlement Section in the Bureau of Unemployment and Sickness Insurance can provide information about the correct amount to withhold from pay for time lost for reimbursement of benefits paid under the Railroad Unemployment Insurance Act. The telephone number of the Claims Adjustment and Settlement Section is (312) 751-4820.

Questions relating to the treatment of pay for time lost under Federal income tax laws should be directed to the Internal Revenue Service.

Any other questions about pay for time lost should be directed to the nearest office of the Railroad Retirement Board (RRB). Addresses and telephone numbers for offices of the RRB are listed in telephone directories under "United States Government." Most business can be conducted by telephone, but if you need to visit an office, you may want to call ahead to arrange a convenient time.

Appendix F

NONDISCRIMINATION ON THE BASIS OF DISABILITY

Under Section 504 of the Rehabilitation Act of 1973 and Railroad Retirement Board (RRB) regulations, no qualified person may be discriminated against on the basis of disability. RRB programs and activities must be accessible to all qualified applicants and beneficiaries, including those who are vision or hearing-impaired. Disabled persons needing assistance (including auxiliary aids or program information in accessible formats) should contact the nearest RRB office. Complaints of alleged discrimination by the RRB on the basis of disability must be filed within 90 days in writing with the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Questions about individual rights under this regulation may be directed to the RRB's Director of Equal Opportunity at the same address shown above.

FRAUD AND ABUSE HOT LINE

Call the toll-free Fraud and Abuse Hot Line if you have reason to believe that someone is receiving railroad retirement or unemployment-sickness benefits to which (s)he is not entitled; that persons responsible for the financial affairs of minors or incompetent beneficiaries are misappropriating benefits; or that a doctor, hospital, or other provider of health care services is performing unnecessary or inappropriate services or is billing Medicare for services not received. You may also use the Hot Line to report any suspected misconduct by a

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Railroad Retirement Board (RRB) employee. The Hot Line has been installed by the RRB's Inspector General to receive any evidence of fraud or abuse of the RRB's benefit programs.

Call (toll-free) 1-800-772-4258. Or you may send your complaints in writing to the RRB, OIG, Hot Line Officer, 844 North Rush Street, Chicago, Illinois 60611-2092.

Please do not call the Inspector General's Hot Line with questions about eligibility requirements, delayed claims, or similar problems. Such matters should be directed to the nearest RRB field office.

APPENDIX G — JUDGMENT OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FILED SEPTEMBER 17, 2015

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JUDGMENT IN A CIVIL CASE

Case Number: 13cv03373 PAM/FLN

MICHAEL D. LOOS,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Defendant BNSF Railway Company was negligent in failing to provide Plaintiff Michael

Loos reasonably safe conditions for work on December 19, 2010.

2. Defendant BNSF Railway Company's negligence did cause, in whole or in part, injury to Plaintiff Michael Loos on December 19, 2010.

3. Plaintiff Michael Loos was not negligent in connection with the December 19, 2010 incident.

4. The amount found to fairly and adequately compensate Plaintiff Michael Loos for damages sustained as a result of the December 19, 2010 incident up to the time of this verdict is as follows:

   a. Past pain, disability, and emotional distress: $85,000.00

   b. Past wage loss: $30,000.00

   c. Past medical expenses: $11,212.78.

5. The amount of money found to fairly and adequately compensate Plaintiff Michael Loos for damages reasonably certain to occur in the future as a result of the December 19, 2010 incident is as follows:

   a. Future pain, disability, and emotional distress: $0

   b. Loss of future earning capacity: $0.

Appendix G

Date: September 17, 2015

RICHARD D. SLETTEN, CLERK

s/Jackie Phipps
(By) Jackie Phipps, Deputy Clerk

s/Paul A. Magnuson
PAUL A. MAGNUSON
United States District Judge

APPENDIX H — JURY INSTRUCTION NO. 18, DAMAGES: INJURY TO EMPLOYEE, FILED SEPTEMBER 15, 2015

Loos v. BNSF Railway Co.,
Case No. 13-cv-3373

INSTRUCTION NO. 18

DAMAGES: INJURY TO EMPLOYEE

8th Cir. 15.70

If you find in favor of the plaintiff, then you must award the plaintiff such sum as you find will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the occurrence mentioned in the evidence. You should consider the following elements of damages:

1. Reasonable and necessary medical expenses needed by and actually provided to the plaintiff to date.

2. The physical pain and emotional suffering the plaintiff has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, whether the injury is temporary or permanent and whether any resulting disability is partial or total, including any aggravation of a pre-existing condition;

3. The earnings the plaintiff has lost to date and the present value of earnings the plaintiff is reasonably certain to lose in the future;

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4. The reasonable value of household services that plaintiff has been unable to perform for himself to date and the present value of household services he is reasonably certain to be unable to perform for himself in the future.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

You may not include in your award any sum for court costs or attorneys' fees.

If you assess a percentage of negligence to the plaintiff by reason of Instruction No. 14, do not diminish the total amount of damages by the percentage of negligence you assess to the plaintiff. The Court will do this.

APPENDIX I — JURY INSTRUCTION NO. 21, DAMAGES: INCOME TAX EFFECTS OF AWARD, FILED SEPTEMBER 15, 2015

Loos v. BNSF Railway Co.,
Case No. 13-cv-3373

INSTRUCTION NO. 21

DAMAGES: INCOME TAX EFFECTS OF AWARD

8th Cir. 15.73

The plaintiff will not be required to pay any federal or state income taxes on an amount that you award.

APPENDIX J — JURY VERDICT OF THE UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA, FILED SEPTEMBER 15, 2015

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

File No. 13-cv-03373 (PAM/FLN)

MICHAEL D. LOOS,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

VERDICT

We, the jury, answer the following questions presented to us:

1. Was Defendant BNSF Railway Company negligent in failing to provide Plaintiff Michael Loos reasonably safe conditions for work on December 19, 2010?

   Yes _X_ No ___

   If you answered "No" to Question 1, your deliberations are complete and your foreperson should sign and date the last page of this verdict form. If you answered "Yes" to Question 1, please answer Question 2.

2. If your answer to Question 1 was "yes," then answer this question: Did Defendant BNSF Railway Company's negligence cause, in whole or in part, injury to Plaintiff Michael Loos on December 19, 2010?

   Yes _X_ No ___

   If you answered "No" to Question 2, your deliberations are complete and your foreperson should sign and date the last page of this verdict form. If you answered "Yes" to Question 2, please answer Question 3.

3. Was Plaintiff Michael Loos negligent in connection with the December 19, 2010, incident?

   Yes ___ No _X_

   If you answered "Yes" to Question 3, please answer Question 4. If you answered "No" to Question 3, please proceed to Question 6.

4. If your answer to Question 3 was "yes," then answer this question: Was Plaintiff Michael Loos's negligence a cause, in whole or in part, of any injuries he sustained as a result of the December 19, 2010, incident?

   Yes ___ No ___

   If you answered "Yes" to Question 4, please answer Question 5. If you answered "No" to Question 4, please proceed to Question 6.

Appendix J

5. If you answered "yes" to Questions 2 and 4, then answer this question: Taking the negligence of both parties to be 100%, what percent do you attribute to:

Defendant BNSF Railway Company	_____%
Plaintiff Michael Loos	_____%
Total	100%

If you answered "Yes" to Questions 1 and 2, and regardless of your answers to Questions 3, 4, or 5, please answer Questions 6 and 7.

6. What amount of money, without any reduction for any negligence which you may find on Plaintiffs part, do you find will fairly and adequately compensate Plaintiff Michael Loos for damages sustained as a result of the December 19, 2010 incident up to the time of this verdict, in the following categories:

a. Past pain, disability, and emotional distress:	$ 85,000
b. Past wage loss	$ 30,000
c. Past medical expenses	$11,212.78

7. What amount of money, without any reduction for any negligence which you may find on the Plaintiff's part, do you find will fairly and adequately compensate Plaintiff Michael Loos for damages reasonably certain to occur in the future as a result of the December 19, 2010 incident, in the following categories:

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a. Future pain, disability, and emotional distress: $ 0

b. Loss of future earning capacity $ 0

Dated: 9/15, 2015

REDACTED